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Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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| In the Matter of | ) | |
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| Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996 | ) | CC Docket No. 98-78 |

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**INTERMEDIA COMMUNICATIONS INC.**
**COMMENTS IN SUPPORT OF ALTS PETITION**
**FOR DECLARATORY RULING**

Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel and pursuant to the Commission's public notice dated June 3, 1988, hereby respectfully submits its comments in support of the Petition for Declaratory Ruling filed by the Association for Local Telecommunications Services ("ALTS"). As the voice of the facilities-based competitive local carrier industry, ALTS has correctly identified the most significant impediments to the growth of competition in local telecommunications markets -- and the largest impediment to the deployment of advanced telecommunications capability to all Americans.

As the nation's largest independent competitive local exchange carrier ("CLEC"), Intermedia has interconnection agreements with most Tier 1 incumbent local exchange carriers ("ILECs"), and has been an active participant in state and federal proceedings involving the implementation of the Telecommunications Act of 1996. From its recent experience, Intermedia is keenly aware that the procompetitive provisions of the 1996 Act are still far from being

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implemented fully, and that much remains to be done to assure that CLECs are able to exercise their rights to interconnection, collocation, unbundled network elements ("UNEs") and resale. A grant of the Declaratory Ruling sought by ALTS would go far toward ensuring that CLECs are able to obtain the full measure of procompetitive relief that the 1996 Act accords them.

## I. CLECS REQUIRE INTERCONNECTION WITH ILEC NETWORKS FOR THE PROVISION OF DIGITAL SERVICES

As ALTS correctly points out, the most disturbing aspect of the 706 petitions filed by Bell Atlantic, U S West and Ameritech – and the recent 706 filing by Southwestern Bell – is that these ILECs are all seeking to insulate their most advanced digital network facilities – and the services provided over them – from their obligations under §§ 251, 252 and 271 to offer interconnection and to offer digital network functions as unbundled network elements. The motivation of these ILECs is obvious – all have announced plans to roll out this year new services based on digital subscriber line ("xDSL") technology, with the most immediate application being high-speed internet access – and the 706 petitions are a transparent attempt to prevent competitive carriers from offering competing digital services to their customers.

The ILECs argue that the Commission should use § 706 of the Act, with its mandate to promote the deployment of advanced telecommunications capabilities to all Americans, as a pretext for deregulating ILEC digital facilities and the services provided over them. This approach must be rejected, however, both as a matter of policy and as a matter of law. First, despite the ILEC's oversimplified rhetoric, it is technically and practically impossible to distinguish between digital packet-switched networks and the services provided over them, and traditional circuit-switched networks and the services that they carry. In fact, there are not two separate networks, and there never were. Rather, there is a single ILEC network that, like the

networks constructed by CLECs across the country, is evolving into a predominantly digital, packet-switched facility.

This evolution of the ILEC networks first became evident in the area of interoffice transport. Over the past decade, ILECs have increasingly replaced copper cable with optical fiber, and have replaced circuit switched-technology with packet-switched equipment. One offshoot of this development is the introduction and widespread deployment of interoffice fiber ring networks using synchronous optical network ("SONET") switching equipment. As a result of these developments, along high-traffic routes, the majority of interoffice transmissions – including those carrying "plain old telephone service" – are now carried over packet-switched, digital facilities.

The same evolution is now taking place in the local loop. The introduction of digital technologies like digital loop carrier and, more recently, digital subscriber line, is enabling ILECs and CLECs alike to dramatically increase the capacity of existing two- and four-wire copper loops. This technology is driving down the cost of local loop facilities, and greatly expanding the number and type of services that can be provided over the loop. Perhaps most significantly, these technologies are making possible the provision of high-bandwidth service to business and residential customers at relatively low cost.

Significantly, however, these developments will not result in a data network overlaying the existing circuit-switched network. Instead, existing facilities are being converted into packet-switched network extensions, making it possible to provide conventional voice telephony, as well as high capacity data services, over copper loops. As a technical matter, it is impossible to segregate the network into "digital" and "analog" components. As a practical matter, no

regulatory structure could reasonably accord different treatment to digital and non-digital services and facilities.

Perhaps most importantly, as a policy matter, there is no justification for limiting the procompetitive mandates of the Telecommunications Act of 1996 to technologies and services that were developed in the 1950s and '60s, while excluding the technology of the 1990s. In fact, the reason that the Internet was able to grow as impressively as it has over the last two decades is because internet service providers had access to the high capacity transport provided by ILECs as well as interexchange carriers and private networks. Only unfettered interconnection and interoperability among these various networks allowed the Internet to grow into its current ubiquitous status. The next step in the evolution of the Internet – the deployment of affordable broadband capacity to all end users – cannot be accomplished if ILECs are able to wall off their local data networks and refuse interconnection to competitive carriers.

Indeed, Intermedia's recent experience is clear evidence of what can be expected if ILECs are able to circumvent the interconnection and unbundling mandates of the 1996 Act. As recounted in the ALTS petition, Intermedia was forced to take one Bell operating company to arbitration in three states in order to enforce its right under the Act to interconnect its network with the BOC's for the handoff of frame relay traffic. More recently, several ILECs have taken similar positions, suggesting that they are not obligated to establish interconnection arrangements for data facilities and services.

In light of the demonstrated resistance of ILECs to provide interconnection and UNEs necessary for the provision of advanced data services, their pending petitions to insulate their digital networks and facilities from the interconnection and unbundling requirements of the 1996 Act are highly disturbing. Such a restriction would, of course, run directly counter to the

mandate of § 706 – it is precisely the advanced capabilities and features made possible by digital technology that § 706 seeks to promote. Refusing CLECs the right to interconnect their digital networks with those being established by the ILECs would prevent CLECs from offering competing digital services to customers served by ILEC networks, profoundly restricting the deployment of new technologies and limiting customer choice. A Declaratory Ruling that § 706 does not justify the deregulation of ILEC digital networks, and that the interconnection and unbundling provisions of §§ 251, 252 and 271 of the Act apply fully to ILEC digital services and facilities would be a significant aid to CLECs in their attempts to interconnect their digital networks with those of the ILECs.

## II. CLECS REQUIRE EFFICIENT AND COST-EFFECTIVE NEW FORMS OF COLLOCATION

As ALTS correctly points out, the cost, delay and restrictions associated with currently available forms of collocation are a major impediment to the growth of facilities-based competition in local markets, and to the deployment of advanced telecommunications capabilities. Moreover, the utility of existing forms of collocation has been further eroded by the ILECs' uniform – and erroneous – interpretations of the Eighth Circuit's decision. The ILECs have taken the position that the Eighth Circuit decision requires CLECs to collocate in every end office, tandem and other location where currently defined UNEs must be connected. This interpretation means that CLECs must incur huge costs – often in excess of a quarter to half a million dollars – in cabling out to each ILEC office and constructing collocation arrangements before they can offer service to the ILECs' captive customers. Moreover, the ILECs further interpret the Eighth Circuit's decision as empowering them to refuse to connect UNEs using virtual collocation arrangements. This position means that CLECs simply cannot serve

customers out of a substantial – and growing – number of ILEC end offices that lack adequate space for physical collocation arrangements, even if the CLECs are able to meet the high cost of physical collocation.

In order to address these profoundly anticompetitive barriers to entry, Intermedia urges the Commission to take the action requested in the ALTS Petition and in the ALTS *ex parte* filing of June 3, 1998. That is, the Commission should use its authority to establish new rules and rates governing both physical and virtual collocation, and should establish efficient and cost-effective alternatives to existing collocation arrangements. These should include: 1) "island" or "cageless" collocation, a form of physical collocation in which physical enclosures are not required, and CLECs can purchase space as small as 7½ square feet, if that is all they require; 2) cage sharing, in which numerous CLECs can share the expense and functionality of a single physically collocated enclosed space; 3) the removal of restrictions on a carrier's ability to cross-connect its collocated equipment with the collocated equipment of another CLEC; and 4) the elimination of any restriction on the type of equipment that may be collocated in an ILEC office – in particular, ensuring that CLECs can collocate internet routers, remote switching modules, and data switches.

Finally, Intermedia urges the Commission to confirm the right of CLECs to use virtual collocation without restriction. In particular, the Commission should prohibit ILEC attempts to force CLECs to install pre-wired cross-connect panels, digital access and cross-connect systems, or other similar equipment in order to connect unbundled loops with unbundled interoffice transport. The Commission should expressly require ILECs to allow CLECs to employ approved contractors to make such connections in virtual collocation arrangements.

## III. THE COMMISSION MUST NOT TAKE ANY ACTION THAT WILL DISRUPT INNOVATIVE AND PROCOMPETITIVE INITIATIVES BY STATE REGULATORS

Intermedia agrees with ALTS that the Commission should not take any action that would disrupt innovative and procompetitive initiatives taken by State regulators in implementing §§ 251 and 252 of the Communications Act. For example, in New York, a series of hearings relating to Bell Atlantic – New York's ("BANY") petition for interLATA relief under § 271 of the Act are expected to result in several innovations that will be very important to CLECs. For example, BANY has offered to provide a variety of alternatives to physical collocation in return for 271 relief. These include island collocation and cage sharing, among other alternatives. In particular, BANY has proposed a collocation alternative called the "Extended Link," by which it will provide an unbundled local loop, end office multiplexing, and interoffice transport to a CLEC's point of presence in a collocated space in a different end office, or in another location. If these initiatives are finally adopted in New York, they will remove some significant barriers to competitive entry, and the Commission should not take any action under § 706 that would disrupt this development.

## IV. THE COMMISSION SHOULD PROHIBIT ANY RESTRICTIONS ON RESALE OF DIGITAL SERVICES

As ALTS correctly notes, the 706 petitions filed by several ILECs seek to insulate ILEC advanced digital services from the resale requirements of Sections 251, 252 and, where applicable, 271 of the Communications Act. In light of recent announcements by most of the largest ILECs that they are aggressively rolling out new services based on xDSL technology this year, these petitions are a transparent attempt to insulate a whole new category of services from

the resale requirements of the Communications Act.[1] As ALTS has made clear, the Act is technology-neutral, and nothing in the Act allows for the selective exemption from the resale requirement for categories of services based on digital technologies. Moreover, as ALTS correctly notes, § 10(d) of the Act expressly prohibits forbearance from enforcing the provisions of §§ 251(c) and where applicable 271 of the Act -- including the resale provisions of § 251(c)(4) and § 271(c)(2)(B)(xiv) – until those provisions are fully implemented. Thus, both as a matter of policy and law, the Commission should issue a declaratory ruling that ILEC xDSL-based services are fully subject to the resale provisions of the Act.

## V. CONCLUSION

For the reasons discussed above, the mandate of Section 706 to promote deployment of new technologies and the introduction of advanced telecommunications services to the American public can best be achieved by ensuring: 1) efficient and cost-effective means of interconnection with ILEC networks, including the implementation of island collocation, extended link arrangements, and virtual collocation; 2) unrestricted access to unbundled network elements, including digital data loops and high capacity interoffice transport; 3) resale of all retail telecommunications services, whether circuit-switched or packet switched. Moreover, the Commission should adopt progressive and procompetitive actions taken by State regulators, such as the New York Public Service Commission. Intermedia therefore urges the Commission to issue a declaratory ruling that the mandate of Section 706 of the 1996 Act can best be

[1] The anticompetitive intent of the ILEC 706 petitions is even more transparent in light of the fact that resale of xDSL-based services could be a significant revenue source for ILECs. In fact, because resale rates simply reflect the absense of avoided costs, it is likely that ILECs would realize a higher margin per resold service than for services they sell at retail. It thus appears that ILECs are motivated more by a desire to exclude competitors from their local markets than from profiting from their xDSL investments.

implemented by full and irrevocable implementation of the interconnection, collocation, unbundling and resale provisions of Sections 251, 252 and 271 of the 1996 Act, and by providing the other relief sought in the ALTS 706 Petition.

Respectfully submitted,

**INTERMEDIA COMMUNICATIONS INC.**

By: _____

Jonathan E. Canis
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W.
Fifth Floor
Washington, D.C. 20554
(202) 955-9600
Its Counsel

Dated: June 18, 1998

## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 1998, served this day a copy of the foregoing INTERMEDIA COMMUNICATIONS INC. COMMENTS IN SUPPORT OF ALTS PETITION FOR DECLARATION RULING by hand delivery to the following:

Ms. Carol E. Mattey
Chief
Policy and Program Planning Division
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Mr. A. Richard Metzger, Jr.,
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Mr. Lawrence E. Strickling
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Ms. Linda Kinney
Attorney Advisor
Policy and Program Planning Division
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Honorable Michael K. Powell
Commissioner
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

Honorable William E. Kennard
Chairman
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

Honorable Susan Ness
Commissioner
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

Honorable Gloria Tristani
Commissioner
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, D.C. 20554

Mr. Jonathan Askin
Attorney Advisor
Policy and Program Planning Division
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Mr. Richard K. Welch
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Mr. Thomas Power
Legal Advisor
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

Mr. Jim Casserly
Senior Advisor
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

Mr. Paul Misener
Chief of Staff, Senior Legal Advisor
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

Mr. Kevin Martin
Legal Advisor
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

Mr. John Nakahata
Chief of Staff
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

Mr. Kyle D. Dixon
Legal Advisor
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

Mr. Paul Gallant
Legal Advisor
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

International Transcription Services, Inc. (ITS)
1231 20TH Street, N.W.
Washington, D.C. 20036

Janice M. Myles
Federal Communications Commission
Common Carrier Bureau
Room 544
1919 M Street, N.W.
Washington, D.C. 20554

Dale Hatfield
Office of Plans & Policy
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Stagg Newman
Office of Plans & Policy
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Mr. James D. Schlichting
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Heather Gold, President
Richard Metzger, General Counsel
Association for Local
Telecommunications Services
888 – 17th Street, N.W.
Washington, D.C. 20006

Michele A. Depasse